No. 92-1834

In The

# Supreme Court of the United States

October Term, 1992

EDGAR F. BRADLEY,

*Petitioner,*

vs.

STATE OF OHIO,

*Respondent.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Ohio**

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RICHARD G. WARD
Ross County Prosecuting Attorney
72 North Paint Street
Chillicothe, OH 45601
Telephone: (614) 775-5881
*Attorney for Respondent*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTION PRESENTED

Whether replevin will lie for the return of fingerprints taken by an Ohio sheriff from a person lawfully arrested and formally charged with a crime and incidental to the sheriff's incarceration of said individual.

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## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

## STATEMENT OF FACTS

In his Petition, Petitioner mischaracterizes the parties to these proceedings and the facts upon which the lower courts issued their decisions. He identifies himself as "Petitioner/Appellant," Sheriff Tom Hamman as "Defendant/Appellee," and the State of Ohio as "Respondent." In the proceedings below, Petitioner appealed the decision of the Ross County Court of Common Pleas dismissing his replevin action in which he sought the return of his fingerprints for Thomas Hamman, the Ross County Sheriff. The Court of Appeals for Ross County, Ohio, affirmed the judgment of the Common Pleas Court, and

the Ohio Supreme Court denied certiorari. Therefore, the appropriate parties to any further proceeding are Edgar Bradley as Petitioner and Sheriff Hamman as Respondent.

On May 24, 1991, Petitioner was at the Ross County, Ohio, Jail as a result of having been arrested by the Ohio State Highway Patrol in neighboring Jackson County, Ohio, on charges of speeding and resisting arrest for which he was subsequently convicted. On May 28, 1991, Sheriff Hamman filed a complaint charging Bradley with obstructing official business under a local ordinance when Bradley refused to be fingerprinted when brought to the Ross County Jail on the Jackson County charges. After his initial refusal, Bradley eventually relented and provided his fingerprints.

Bradley commenced the replevin action pursuant to Ohio Revised Code Chapter 2737 in Ross County Common Pleas Court to recover his fingerprints after he was acquitted of the obstructing official business charge in the Chillicothe Municipal Court, Chillicothe, Ohio.

The Common Pleas Court of Ross County, Ohio, dismissed the replevin complaint upon a determination that there was no wrongful detention of Bradley's fingerprints since the Sheriff had an administrative duty to maintain an identification record of every commitment to the county jail, including identifying characteristics such as fingerprints.

As indicated, the Court of Appeals affirmed, and the Ohio Supreme Court denied certiorari.

## SUMMARY OF ARGUMENT

There is no question of law at issue that justifies the grant of a writ of certiorari in these proceedings. Sheriffs in Ohio have a common law power to fingerprint persons who have been lawfully arrested or charged with a crime and to maintain records of those fingerprints.

## ARGUMENT

This case involves an appeal from the decision of the trial court in a replevin action. Under Ohio law, a replevin action is founded upon an unlawful detention of personal property. Where a person claims title to and the right to immediate possession of specific personal property, he has the right to recover possession of such property by court action. *Service Transport Co. vs. Matyas,* 159 Ohio St. 300 (1953). An action in replevin is founded upon an unlawful detention regardless of whether an unlawful taking has occurred. *Jedlicka vs. Good Mechanical Auto Co.,* 21 Ohio App. 3d 19 (1984).

In essence, Petitioner attempts to raise in this Court constitutional issues which are at best ancillary to the basic issue which is whether the Respondent Sheriff wrongfully detained Petitioner's fingerprints. Although the method of obtaining the fingerprints is not a proper issue in an Ohio replevin action, Respondent submits that he lawfully obtained them. Sheriffs in Ohio have a common law power to fingerprint persons who have been lawfully arrested or charged with a crime. Ohio law generally recognizes that peace officers have the power to fingerprint for identification purposes in that the power

to fingerprint for identification is reasonably incidental to the sheriff's duty to preserve the peace and prevent crime. *United States vs. Laub Baking Co.*, 283 F. Supp. 217 (N.D. Ohio 1968).

Petitioner argues that he is entitled to the return of his fingerprints by virtue of the provisions of Section 109.60 of the Ohio Revised Code which he claims requires the return of fingerprints upon a finding of not guilty. Revised Code Section 109.60 is inapplicable to Petitioner's case for two reasons. First, the section applies only to persons arrested for a felony or a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. In this case, the Respondent Sheriff initially sought to fingerprint him subsequent to his arrest for speeding and resisting arrest. Under Ohio law, speeding and resisting arrest are not felonies or crimes constituting a misdemeanor on the first offense and a felony on subsequent offenses. Obviously, Revised Code Section 109.60 is inapplicable.

Second, Petitioner was convicted on the speeding and resisting arrest charges. Again, Revised Code Section 109.60 is inapplicable to persons convicted of the crimes charged.

In separate proceedings, Petitioner was acquitted of obstruction of official business, a charge which arose out of his initial refusal to be printed in conjunction with his arrest for speeding and resisting arrest. Petitioner was not entitled to the return of his fingerprints upon this acquittal for reason that it was his arrest for speeding and resisting arrest that initially prompted Respondent to take and detain his fingerprints.

## CONCLUSION

It is respectfully submitted that Petitioner has failed to establish any reason why the writ should be granted. The decision below did not involve questions of federal law which have not been, but should be, settled by this Court, nor did it decide a federal question in a way that conflicts with applicable decisions of this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

RICHARD G. WARD
Ross County Prosecuting Attorney
72 North Paint Street
Chillicothe, OH 45601
Telephone: (614) 775-5881

# APPENDIX

**109.60 Duty of sheriffs and chiefs of police to take fingerprints; report; exception**

The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, or for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward them, together with such other descriptions as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused be found not guilty of the offense charged or a nolle prosequi entered in any case, then the fingerprints and description shall be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice or wanted by any jurisdiction in this or any other state or the United States or a foreign country for any offense, he shall at once inform the arresting officer of such fact and give appropriate notice to the proper authorities in the jurisdiction in which such person is wanted, or, if such jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to such foreign country. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance unless the officers have reason to believe that

such person is a past offender, or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age, except as provided in section 2151.313 of the Revised Code.